

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

**COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

Grant B. Spellmeyer  
Vice President  
Federal Affairs and Public Policy

David A. LaFuria  
John Cimko

UNITED STATES CELLULAR CORPORATION  
500 N. Capitol Street, N.W., Suite 210  
Washington, D.C. 20001  
(202) 290-0233

LUKAS, LAFURIA, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
Tysons, Virginia 22102  
(703) 584-8678

September 20, 2019

## TABLE OF CONTENTS

SUMMARY .....	ii
I. INTRODUCTION. ....	2
II. DISCUSSION. ....	3
A. Facilitating a Federal-State Partnership.....	3
B. Broadband Speeds of 25/3 Mbps Should Be the Baseline for Establishing Eligible Areas. ....	5
C. The Commission Should Adjust Its Weighting Mechanism to Ensure that the Lowest Speed Tier Applicants Have a Fair Chance of Succeeding in the RDOF Auction. ....	5
D. Subscribership Milestones Should Not Be Adopted. ....	8
E. U.S. Cellular Opposes Distributing RDOF Support Based on FCC Form 477 Mapping Data. ....	10
III. CONCLUSION.....	12

## SUMMARY

United States Cellular Corporation commends the Commission for its efforts in proposing a framework for the Rural Digital Opportunity Fund that will enable the Commission to take the next step toward realizing its goal of closing the rural Digital Divide. U.S. Cellular takes this opportunity to make several suggestions concerning the Commission's RDOF proposal.

Regarding the federal-state universal service partnership, U.S. Cellular encourages the Commission to provide incentives for states to implement funding programs for broadband deployment, which will help to share the cost burdens associated with closing the Digital Divide.

U.S. Cellular supports the Commission's proposal to use a throughput speed of 25 Mbps down and 3 Mbps up as the basis for designating areas as eligible for RDOF support, since this will expand the map of eligible areas, as compared to the 10 Mbps/1 Mbps map used for Connect America Fund Phase II support.

The Commission should adopt a weighting mechanism that does not freeze out lowest speed tier applicants from any realistic participation in the RDOF auction. In the CAF Phase II auction the Commission's weighting system resulted in only 0.25% of the winning bids being awarded to the lowest tier. Now, the Commission is proposing to replicate that weighting system—which has a 90-point spread between top and bottom tier competitors—for the RDOF auction. U.S. Cellular believes this would be a mistake, and suggests that, instead, the Commission should narrow the weighting spread to ensure that the lowest tier gets a minimum of 5-10% of the funding opportunities.

U.S. Cellular opposes the Commission's proposal to adopt subscribership milestones that would impose penalties even if an RDOF support recipient has met build-out requirements and has taken reasonable steps to gain subscribers. The requirement would complicate network planning

efforts for auction participants, would have the practical effect of imposing rate regulation, and would not be competitively neutral.

Finally, U.S. Cellular opposes the Commission's plan to use flawed FCC Form 477 data as the basis for awarding RDOF support. Before distributing \$16 billion in RDOF Phase I support, the Commission should take the time necessary to ensure that RDOF eligibility is determined through the use of accurate and reliable coverage maps.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

**COMMENTS  
of  
UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“U.S. Cellular”), by counsel and pursuant to the Commission’s Notice of Proposed Rulemaking, hereby files comments in the above-captioned proceedings.<sup>1</sup>

U.S. Cellular is the fifth largest wireless carrier in the United States, providing mobile wireless voice and broadband services across 21 states, located in regional clusters across the country. Much of U.S. Cellular’s business involves finding ways to build towers and provide service in small towns and on rural roads, areas where population density, income levels, and commercial development are often well below those in the nation’s urban areas. Consequently, U.S. Cellular is constantly exploring ways to address the economics of providing vital services to areas that present financial challenges to build, maintain, and upgrade voice and broadband services.

---

<sup>1</sup> *Rural Digital Opportunity Fund*, WC Docket No. 19-126, *Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking, FCC 19-77, 84 Fed. Reg. 43,543 (rel. Aug. 2, 2019) (“*NPRM*”).

## **I. INTRODUCTION.**

The Commission's proposed Rural Digital Opportunity Fund ("RDOF"), which will make available \$16 billion in funding for Phase I of the program, represents a major next step toward bringing advanced broadband services to rural America. The Commission has long been committed to administering its high-cost universal service programs in a manner that helps to close a Digital Divide that has left many rural communities without the benefits of broadband, depriving those communities of all the economic, educational, cultural, and other benefits that flow from connectivity with high-speed broadband networks. Rural Americans should be encouraged by the prospect that Phase I of RDOF will help to bring these broadband networks to their communities.

Unfortunately, that prospect is dimmed by two components of the Commission's proposal. First, the Commission is proposing an auction weighting mechanism that disproportionately favors bidders proposing to offer higher-speed broadband services, to the detriment of auction participants intending to bid in the baseline 25/3 tier. With virtually no fact-based rationale, other than an apparent desire to repeat the formula used in the Connect America Fund Phase II ("CAF II") auction, the Commission proposes to have a 90-point spread between the top and bottom RDOF tiers.

If the Commission fails to address this problem, there is a substantial risk that there will be few or no bidders in the baseline tier. Such a result would have real, negative consequences for rural communities that could have received broadband service in the near-term from auction winners bidding in the baseline tier. U.S. Cellular encourages the Commission to adjust its weighting mechanism to promote, rather than foreclose, a competitive auction among participants in all the tiers.

Second, the Commission proposes to move forward with the RDOF auction using FCC Form 477 data. The overstated coverage data submitted by service providers in their FCC Form 477 filings virtually guarantees that there will be numerous rural communities that are currently unserved by broadband networks, but that will be ineligible for any RDOF support, because the flawed FCC Form 477 coverage maps incorrectly show that they already have access to broadband services. The Commission risks cutting off these communities from any universal service support for at least 10 years, leaving them with no opportunity to gain the benefits of advanced broadband networks.

Given that the Commission—through its adoption of the Digital Opportunity Data Collection (“DODC”)—is building a new data collection mechanism that promises to be much more accurate than FCC Form 477 in identifying unserved areas, U.S. Cellular urges the Commission to fix the broadband mapping first, and then proceed with the RDOF auction.

## **II. DISCUSSION.**

### **A. Facilitating a Federal-State Partnership.**

As the Commission properly notes in the *NPRM*, the universal service program envisioned by Congress is a federal-state partnership. The Commission asks what it can do to facilitate that partnership.<sup>2</sup>

In the 1996 Telecom Act, Congress set forth a mechanism for the federal government and state governments to share the burdens of providing universal service for all Americans.<sup>3</sup> Congress intended for states to shoulder at least some of the burden for meeting the goals set forth in Section

---

<sup>2</sup> *Id.* at para. 13.

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Telecom Act”).

254 of the Communications Act of 1934,<sup>4</sup> as added by the 1996 Telecom Act, and many states today have universal service mechanisms that provide support to participating carriers. However, not all states have universal service mechanisms, leaving the FCC to shoulder a disproportionate share of the job of closing the Digital Divide.

At various times, the Commission has attempted to develop various “carrot and stick” approaches, to encourage states to develop universal service mechanisms.<sup>5</sup> Now, with the imperative of accelerating broadband deployments to rural areas, the Commission should consider rewarding states that develop their own broadband funds, and not rewarding those that do not.

Without making a specific proposal at this time, U.S. Cellular notes that the cost of building out nationwide high-speed broadband networks, both wireline and wireless, will be significantly greater than the Commission’s RDOF and Mobility Fund budgets. State participation can accelerate infrastructure development as evidenced by broadband programs currently underway in states

---

<sup>4</sup> 47 U.S.C. § 254.

<sup>5</sup> See, e.g., *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17671-72 (para. 15) (2011), *aff’d sub nom. In re FCC 11-161*, 703 F.3d 1015 (10th Cir. 2014) (footnote omitted), indicating that:

We recognize that USF and ICC [intercarrier compensation] are both hybrid state-federal systems, and it is critical to our reforms’ success that states remain key partners even as these programs evolve and traditional roles shift. Over the years, we have engaged in ongoing dialogue with state commissions on a host of issues, including universal service. We recognize the statutory role that Congress created for state commissions with respect to eligible telecommunications carrier designations, and we do not disturb that framework. We know that states share our interest in extending voice and broadband service, both fixed and mobile, where it is lacking, to better meet the needs of their consumers. Therefore, we do not seek to modify the existing authority of states to establish and monitor carrier of last resort (COLR) obligations. We will continue to rely upon states to help us determine whether universal service support is being used for its intended purposes, including by monitoring compliance with the new public interest obligations described in this Order. We also recognize that federal and state regulators must reconsider how legacy regulatory obligations should evolve as service providers accelerate their transition from the Public Switched Telephone Network (PSTN) to an all IP world.



such as Colorado, Nebraska, New Mexico, and Colorado. By providing incentives for states to develop broadband funds, the FCC will accelerate broadband deployment and increase the likelihood that states will share the burden of closing the Digital Divide, as Congress intended.

**B. Broadband Speeds of 25/3 Mbps Should Be the Baseline for Establishing Eligible Areas.**

For the RDOF auction, the Commission proposes to establish a throughput speed of 25 Mbps down and 3 Mbps up (“25/3”) as the basis for establishing eligible areas.<sup>6</sup> That is, areas lacking access to broadband at speeds greater than 25/3 will be eligible.

U.S. Cellular endorses this proposal, as it will significantly increase the map of eligible areas from the prior 10 Mbps/1 Mbps map used by the Commission for determining areas eligible for CAF II support. Moreover, it will provide incentives for incumbent carriers offering slow speeds to participate in the RDOF auction, or risk losing out to competitors. This will raise the bar for all rural Americans.

**C. The Commission Should Adjust Its Weighting Mechanism to Ensure that the Lowest Speed Tier Applicants Have a Fair Chance of Succeeding in the RDOF Auction.**

In its *CAF II Order*, the Commission discussed its chosen weighting mechanism for the upcoming CAF II auction, indicating that, “[b]ased on our predictive judgment, we conclude that this approach is likely to promote competition both within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations.”<sup>7</sup>

---

<sup>6</sup> *NPRM* at para. 14.

<sup>7</sup> *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1633 (para. 27) (2017) (“*CAF-II Order*”). In the *NPRM*, the Commission describes the approach it took in the *CAF II Order* as follows:

Yet, the CAF II auction did not work out that way. Not all service providers were able to place competitive bids. In the *NPRM*, the Commission notes that, “in the CAF Phase II auction, only 0.25% of locations were awarded at the minimum performance tier (10/1), and so we expect that its exclusion will have minimal impact on the results of the Rural Digital Opportunity Fund auction.”<sup>8</sup>

The fact that only 0.25% of the winning bids were at the lowest 10/1 tier strongly suggests that the FCC’s weighting was incorrect, because those who bid at the minimum performance tier were not able to “place competitive bids.” In fact, minimum tier bidders had virtually no chance of success. This shortcoming had significant negative geographic impacts for rural America, because higher tier winners using wireline technologies, such as fiber to the home, could not serve as many households as lower tiers, which often employ wireless or other cost-efficient technologies. This is borne out by looking at the FCC’s CAF II coverage map, showing just how little area was actually covered by the funds distributed.<sup>9</sup>

Looking back at the *CAF II Order*, it appears that the FCC picked the weights assigned to various tiers somewhat arbitrarily. Rather than using a fact-based analysis, it chose from within a range of weights suggested by participants in the proceeding:

We conclude that establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may

---

There the Commission adopted weights of 65 for the Minimum performance tier, 45 for the Baseline performance tier, 15 for the Above Baseline performance tier, and 0 for the Gigabit performance tier, as well as a weight of 25 for high latency bids and 0 for low latency bids. Accordingly, the spread between the best and least performing tiers was 90 points.

*NPRM* at para. 25 (footnotes omitted).

<sup>8</sup> *NPRM* at para. 24 n.38.

<sup>9</sup> An interactive map is available at FCC, *Connect America Fund Phase II: Auction 903 Results*, accessed at <https://www.fcc.gov/reports-research/maps/caf2-auction903-results/>.

not produce an improved outcome in the auction.... Instead, we adopt weights between each tier that recognize the value of increased speeds and usage allowances and select weights that fall within the range of weights proposed by parties in the record that do not seek to give any one tier an absolute preference.<sup>10</sup>

Now, however, the Commission actually has the CAF II results, which provides specific data on how its weighting mechanism has played out. In developing three tiers and a weighting mechanism, the Commission should consider adjustments to make the 25/3 tier more competitive.

The Commission should ask whether, if the chosen weights for CAF II were indeed a compromise, then was a 90-point weighting spread from top to bottom, which resulted in the lowest tier getting 0.25% of the winning bids, the *right* compromise. U.S. Cellular suggests that if the Commission really wants even 10% of the winning bids to fall to the 25/3 tier, a 90-point spread between the lowest and highest will not provide that result. Moreover, if prospective RDOF bidders believe the 25/3 tier will be shut out, similar to the lowest tier in CAF II, they will not show up, and that is not a good result.

It is important to have robust participation in the 25/3 baseline performance tier, which will include many Wireless Internet Service Providers (“WISPs”), those using unlicensed or TV White Spaces, and small wireless carriers, many of whom do not have the depth of spectrum held by the largest carriers. It is important because the 25/3 technologies will deliver broadband far and wide—covering a potentially much greater area, more homes, and more businesses, than the higher tiers. With the Commission’s very limited budget of \$16 billion over ten years in RDOF Phase I, adopting performance tiers that will have the effect of limiting support to only the higher tiers will likely result in a much smaller footprint of improved broadband services.

---

<sup>10</sup> *CAF II Order*, 32 FCC Rcd at 1634 (para. 28).

U.S. Cellular notes that, in proposing weights for its latency requirements, the Commission provides no analysis as to why the weight for high latency should be increased from 25 to 40, other than to state in conclusory fashion that it wants to retain the 90-point spread between top and bottom competitors that was used in the CAF II auction.<sup>11</sup> U.S. Cellular suggests that, by retaining the 25 weighting for latency and the 45 weighting for the 25/3 tier, the FCC will incentivize greater participation in the auction and increase its competitiveness.

In sum, it will do a great disservice to rural America if the RDOF auction skews as the CAF II auction did. Most residential users do not need or use a 1 Gbps connection today, and skewing the auction with a 90-point weighting will leave far greater numbers of consumers behind, with access only to broadband service that is sometimes far less than 25/3.<sup>12</sup>

U.S. Cellular asks the Commission to narrow the weighting spread, to be sure that the lowest tier gets a minimum of 5-10% of the funding opportunities. Phase I of RDOF, the first \$16 billion, should be all about getting as many people up to a decent speed as quickly as possible. To get 100% of rural America up to much faster speeds, the Commission should determine the cost of doing so, and increase the overall size of the fund to accomplish that worthy goal.

#### **D.     Subscribership Milestones Should Not Be Adopted.**

The Commission proposes to condition a portion of support on an awardee's meeting subscribership milestones.<sup>13</sup> As U.S. Cellular understands it, a carrier would be penalized for failing to meet subscribership milestones even though it (1) built the required service and has otherwise

---

<sup>11</sup> *NPRM* at para 25.

<sup>12</sup> See, e.g., Wall St. J. Video, "More Bandwidth Might Not Speed Up Your Internet. Here's Why" (Aug. 20, 2019) accessed at <https://www.wsj.com/video/more-bandwidth-might-not-speed-up-your-internet-here-why/BBB47E88-0254-4E3E-94C8-F32754976DFD.html>.

<sup>13</sup> *NPRM* at paras. 41-44.

done everything the FCC has asked regarding infrastructure deployment, (2) priced the service at the optimal level to achieve at least 70% subscribership, notwithstanding that this pricing might be inconsistent with the marketplace, and (3) took whatever other actions are prudent to market the service and conduct outreach to the served communities.

U.S. Cellular opposes this proposal. It is extraordinarily difficult to plan an entire network in anticipation of a universal service support auction. In U.S. Cellular's experience, it has spent more than it expected to meet the Commission's construction requirements, in one case millions more than it had predicted before the auction. Adding a penalty for failing to achieve certain subscribership levels greatly complicates matters. To give just one example, if an RDOF awardee finishes a network build, just as a competing provider offers a competing service (e.g., satellite) that captures 50% market share, a penalty imposed on the awardee would be unfair and draconian.

Requiring compliance with subscribership milestones to avoid a penalty is also perilously close to rate regulation. In effect, the Commission would be mandating a business strategy that pushes carriers to lower prices if they are not successful at attracting customers, perhaps to below-market or even below break-even, levels in order to avoid a penalty. The Commission's proposed penalty is bound to distort the marketplace.

Nor would the proposal be competitively neutral. No class of carriers—other than carriers receiving RDOF support, under the FCC's proposal—is held to the proposed subscribership standards. If the FCC is to approach this at all (and U.S. Cellular thinks it should not) it should be in the context of a rulemaking of general applicability, so that all USF recipients are affected equally and all stakeholders have an opportunity to comment.

In sum, reductions in support should be reserved for those who do not meet their commitments to build networks as promised.

**E. U.S. Cellular Opposes Distributing RDOF Support Based on FCC Form 477 Mapping Data.**

The Commission has announced its intention to distribute \$16 billion in Phase I of the RDOF process, based on maps generated using the most recently available FCC Form 477 data.<sup>14</sup> At this date, it is well established and there is little controversy surrounding the fact that FCC Form 477 data does not portray broadband availability with sufficient accuracy to underpin a fair distribution of universal service support. Members of Congress have held multiple oversight hearings designed to inform the Commission that the data needs to be improved.<sup>15</sup> There are numerous legislative efforts to improve broadband mapping, the most prominent of which currently is S.1822, the Broadband DATA Act.<sup>16</sup>

In the Mobility Fund Phase II (“MF II”) proceeding, the Commission ordered a “one-time” data collection, solely because it was convinced that FCC Form 477 data was not of sufficient quality to be used for determining eligibility for support in the MF II auction.<sup>17</sup>

---

<sup>14</sup> *NPRM* at para. 48.

<sup>15</sup> See, e.g., *Legislating to Connect America: Improving the Nation’s Broadband Maps*, Hearing Before the H. Comm. on Energy & Commerce, Subcomm. on Communications & Technology, 116th Cong., 1st Sess. (2019), accessed at <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-legislating-to-connect-america-improving-the-nations>; *Broadband Mapping: Challenges and Solutions*, Hearing Before the S. Comm. on Commerce, Science & Transportation, 116th Cong., 1st Sess. (2019), accessed at <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=1B786B30-9A80-4307-AC3B-F42DF79C474D>.

<sup>16</sup> S. 1822, 116th Cong., 1st Sess., introduced June 12, 2019, accessed at <https://www.congress.gov/bill/116th-congress/senate-bill/1822/text>. The bill was reported by the Committee on Commerce, Science, and Transportation on July 24, 2019.

<sup>17</sup> See *Connect America Fund Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282 (2017).

Last month, the FCC issued its Report and Order and Further Notice of Proposed Rulemaking, adopting the DODC.<sup>18</sup> The new data collection is designed to gather data of a significantly higher quality, resulting in more accurate maps of broadband availability in rural areas. The Commission proposes to amend the definition of where service is available, but it does not propose to immediately amend FCC Form 477 instructions to adopt an identical definition.<sup>19</sup> Accordingly, FCC Form 477, with all of its shortcomings, including depicting a census block as 100% covered if even one subscriber has qualifying broadband, could continue into the indefinite future.

An auction for the disbursement of \$16 billion in universal service support is a big deal. Unless the Commission plans to substantially expand the size of the fund, RDOF Phase I is by far the largest expenditure the Commission will make over the next decade in its ongoing efforts to close the Digital Divide. The Commission cannot go forward with an auction until it has a picture of rural America that is more accurate than the one depicted by FCC Form 477.

The best policy choice is for the Commission to gain a full understanding of where broadband is available, and where it is not available, and then conduct an auction to distribute \$16 billion in RDOF support. Plowing forward with poor mapping data is bad policy, and it flies in the face of substantial Congressional guidance that the Commission should fix the broadband coverage maps first, and then distribute support accurately, at the earliest possible date.

---

<sup>18</sup> *Establishing the Digital Opportunity Data Collection, et al.*, WC Docket No. 19-195, *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (rel. Aug. 6, 2019).

<sup>19</sup> *Id.* at para. 13.

### III. CONCLUSION.

The Commission deserves praise for its stewardship in crafting a proposal for disbursing substantial universal service support to rural communities that are trapped on the wrong side of the Digital Divide with no prospect of bridging that Divide without RDOF support.

U.S. Cellular urges the Commission, as it proceeds with implementing its proposal, to take the steps necessary to ensure that no rural communities are foreclosed from receiving support because faulty mapping data incorrectly classifies these communities as ineligible for funding, and to ensure that auction participants bidding in the baseline 25/3 tier have a fair chance to compete for funding, enabling them to bring broadband to rural communities that otherwise could be off the broadband grid for more than a decade.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By: 

---

David A. LaFuria  
John Cimko

LUKAS, LAFURIA, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
Tysons, Virginia 22102  
(703) 584-8678

Grant B. Spellmeyer  
Vice President  
Federal Affairs and Public Policy

UNITED STATES CELLULAR CORPORATION  
500 N. Capitol Street, N.W., Suite 210  
Washington, D.C. 20001  
(202) 290-0233

September 20, 2019